P'NG SAI CHOO & 10 ORS.

v.

SAW KENG SEE & ANOR. AND TWO OTHERS AS APPLICANTS

HIGH COURT, KUCHING
DATO' HAJI ABDUL KADIR BIN SULAIMAN J.
[SUIT NO. KG. 34 OF 1992]
23 FEBRUARY 1994

PRACTICE & PROCEDURE: Application for leave to intervene and/or be added as defendants in the action - Whether the applicants are persons within the ambit of O. 15 r. 6(2)(b)(i) or (ii) of the Rules of the High Court 1980 - Whether applicants will be directly affected by any order which may be made by the Court in the main action.

The defendants were appointed the executors and the trustees under a purported will of the deceased. The plaintiffs, *inter alia*, applied for the will to be revoked and declared null and void and sought an injunction to restrain the defendants from administering the estate of the deceased.

One of the interests of the deceased included a ship yard firm of which the deceased was the sole proprietor. The applicants were appointed the sole contractor to undertake all forms of work on government vessels taken on by the shipyard firm. The applicants sought to intervene and/or be added on as defendants in the main suit between the plaintiff and defendant. The parties to the main suit did not object to the application and it was left to the Court to decide whether the applicants were persons within the ambit of O. 15 r. 6(2)(b)(i) or (ii) of the Rules of the High Court 1980 (RHC 1980).

Held:

[1] The jurisdiction of the Court under O. 15 r. 6 RHC 1980 is entirely discretionary and the discretion to join the applicants as defendants in the main suit will be exercised if the applicants can satisfy the Court that their rights against or liabilities to the plaintiffs or the existing defendants may be directly affected by any order which may be made in the main action.

[2] Any right or liability, if any, arising out of the contract of the applicants with the shipyard firm, must be that which exists between the shipyard firm and the applicants. It has nothing to do with the action of the plaintiffs against the existing defendants challenging the validity of the purported will of the deceased. Either way the decision in the main suit goes, the rights of the applicants will not be extinguished or affected by the decision.

[3] In the circumstances, paragraph (i) of O. 15 r. 6(2)(b) RHC 1980 does not apply to require the Court to exercise its discretion to grant the prayers sought by the applicants as the matters in dispute between the present plaintiffs and the defendants, and that between the applicants and the shipyard firm are not in respect of the same matter.

[4] Whether the plaintiffs succeed or not in the main suit, the property in the business of the shipyard firm, over which the applicants may exercise whatever relief or remedy there is arising out of their dealings with the shipyard firm before the death of the deceased, remains. The applicants will not therefore be in any way affected or prejudiced by the decision in the main suit by the plaintiffs against the defendants as the decision in the suit will only affect the manner in which the property in the business is to be administered, namely either through the will or through intestacy.

[5] In the circumstances, the applicants have failed to satisfactorily show that they are persons envisaged by O. 15 r. 6(2)(b) RHC 1980 and the application must necessarily fail.

[Application dismissed with no order as to costs].

Case referred to:

Penang Mining Co. Ltd. v. Choong Sam & Ors. [1969] 2 MLJ 52 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 15 r. 6(2)(b)(i), (ii)

For the plaintiffs: Ernest Chua; M/s. Ernest Chua & Co.
For the defendants: Paul Tang; M/s. Tan & Yap
For the applicants - Arthur Lee; M/s. Arthur Lee & Co.

JUDGMENT

Haji Abdul Kadir Bin Sulaiman J:

The applicants trading under the name and style of Universal Engineering Works (the partnership business) applies for several orders including leave be granted to intervene and/or be added as defendants in an action commenced by the plaintiffs against the two defendants. On

the date of hearing of the application, the applicants withdrew the prayers in respect of other orders sought but proceeded only in relation to application for leave to intervene and/or be added as defendants in the existing action, and for further or such other reliefs as the Court may deem just and expedient in the circumstances. Both the plaintiffs and the two defendants in the main suit do not object to this application.

The plaintiffs' claim against the defendants in the main action is for:

(1) an injunction to restrain the defendants by themselves, their agents or servants or howsoever otherwise from:

(a) applying to the Probate Officer either in Penang or in Kuching for a grant of probate in respect of the estate of the late Wong Seh Cheng @ Wong Sey Cheng and/or to administer the said estate;

(b) entering and/or remaining in Seng Guan Shipyard and carrying on the business of Seng Guan Shipyard at Lot 65, Bintawa Industrial Estate, Kuching;

(c) withdrawing any money kept or deposited in the name of Seng Guan Shipyard and/or the name of Wong Seh Cheng @ Wong Sey Cheng at the Hongkong and Shanghai Bank and its branches in Kuching and Penang and at the Standard Chartered Bank and its branches in Kuching and Penang.

(2) an order that the last will of Wong Seh Cheng @ Wong Sey Cheng dated 10 December 1991 be revoked and declared null and void;

(3) an order that the defendants do deliver up the original of the last will of Wong Seh Cheng @ Wong Sey Cheng dated 10 December 1991 for cancellation;

(4) damages and such other reliefs as this Court deems just; and

(5) costs.

Thus the plaintiffs are challenging the purported last will of Wong Seh Cheng @ Wong Sey Cheng (the deceased) and seek to prohibit the executors and the trustees of the will from applying for probate or to administer the estate of the deceased. The interests of the deceased includes a business called Seng Guan Shipyard (the shipyard firm) of which the deceased was the sole proprietor, and by the action, the plaintiffs are also seeking to prohibit the defendants from carrying on the business of the shipyard firm and to withdraw any money kept or deposited in the name of the shipyard firm and/or in the name of the deceased at the respective banks.

Now, by this application the applicants wants to intervene in the action. In order to be able to do so the applicants must be persons within the ambit of O. 15 r. 6(2)(b)(i) or (ii) of the Rules of the High Court 1980 (RHC). The jurisdiction of the Court under the said Order of the RHC is entirely discretionary. It is not for the plaintiffs or the defendants to decide whether the application ought or ought not to be granted. They may argue before the Court if they oppose the application. The Court will exercise its discretion to grant the order sought if the applicants satisfy the Court that they are persons necessary to ensure that all matters in dispute between the plaintiffs and the existing defendants may be effectually and completely determined and adjudicated upon, or that they are persons between whom and the plaintiffs or the existing defendants in the main suit there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the main suit which in the opinion of the Court it would be just and convenient to determine as between the applicants and the existing party in the main suit as well as between the parties to the suit. Discretion to join the applicants as defendants in the main suit will be exercised if the applicants can satisfy the Court that their rights against or liabilities to the plaintiffs or the existing defendants may be directly affected by any order which may be made in the main action. *Penang Mining Co. Ltd. v. Choong Sam & Ors.* [1969] 2 MLJ 52 PC. Now the issue is, will the applicants in this case be directly affected by any order which may be made by the Court in the main action? From the affidavit of Danny Wee Bee Soon affirmed on 15 May 1992 for the applicants, annexed to the application, it would appear that the shipyard firm since 1 February 1988 had appointed the partnership company of the applicants to be its sole contractor to undertake all forms of work on government vessels taken on by the shipyard firm. The applicants used the shipyard firm's name in their dealings with the government. Throughout the period of

1988 to 1991, the partnership firm undertook all contracts which the partnership firm tendered for in the shipyard firm's name and the proceeds were split or divided between the partnership and the shipyard firms. Such being the position, in as far as the government is concerned, the applicants are strangers in relation to its contract with the shipyard firm. The partnership firm of the applicants had no contract legally binding with the government. Understandably, upon the demise of the deceased, the applicants are very much concerned in regard to their dealings with the government in respect of the contract work of the shipyard firm with the government and more so in regard to whatever proceeds yet to be split or divided before the death of the deceased. But what has that got to do with the dispute between the plaintiffs and the defendants over the administration of the estate of the deceased? Any right or liability, if any, arising out of the contract of the applicants with the shipyard firm, must be that which existed between the shipyard firm and the applicants. It has nothing to do with the action of the plaintiffs against the existing defendants challenging the validity of the purported will of the deceased. The property of a deceased person will upon his death devolve either in intestacy or under his will, depending on whether or not there is a valid bequest under the will. As far as the applicants are concerned in relation to their contract with the shipyard firm, their remedy now is against the estate of the deceased and if probate or letters of administration is subsequently granted, either through the executrix and trustees of the will or through the administrators of the estate. It has nothing to do with the dispute now existing between the plaintiffs and the existing defendants over the fate of the purported will of the deceased. Either way the decision in the main suit goes, the rights of the applicants will not be extinguished or affected by the decision. Paragraph (i) of O. 15 r. 6(2)(b) of the RHC envisages a situation whereby to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. In the particular instance, the matters in dispute between the present plaintiffs and the defendants, and that between the applicants and the shipyard firm are not in respect of the same matter. So, to that extent, I am of the view that the paragraph does not apply to require the Court to exercise its discretion to grant the prayers sought by the applicants. As regards paragraph (ii) thereof, in order for the applicants to succeed the Court must be satisfied that there exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the main suit which in the opinion of the Court it would be just and convenient to determine as between the applicants and the existing parties in the main suit. By the main suit the plaintiffs applies for the will to be revoked and declared null and void. Under clause 6 of the impugned will of the deceased, the deceased purportedly devised and bequeathed his business in the shipyard firm, which concerns the applicants, to the first plaintiff, the two defendants, and his two adopted sons according to the percentage stated therein. If the plaintiffs succeed in the action, the property in the said business would fall into intestacy and if the plaintiffs lose, the will is operative. Either way, the property in the business of the firm remains, over which the applicants may exercise whatever relief or remedy there is arising out of their dealings with the shipyard firm before the death of the deceased. The applicants will not, therefore, be in any way affected or prejudiced by the decision in the main suit by the plaintiffs against the defendants. The decision in the suit will affect only the manner in which the property in the said business is to be administered, either through the will or through intestacy.

In the circumstances, I am satisfied that the applicants are not such persons as envisaged by O. 15 r. 6(2)(b) of the RHC and in the circumstances, the application must necessarily fail. I accordingly, dismiss the application. In the light of the non-objection by both the plaintiffs and the defendants to the application of the applicant, which was wrongly taken, I make no order as to costs.